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| <b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                    | Docket Number (Optional)<br>006921.00018 |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]<br><br>on _____<br><br>Signature _____<br><br>Typed or printed name _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Application Number<br><br>10/593,818               | Filed<br><br>July 13, 2007               |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | First Named Inventor<br><br>Peter Dam Nielsen      |                                          |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Art Unit<br><br>2617                               | Examiner<br><br>Huynh, Nam Trung         |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).<br/>Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding-bottom: 10px;">/Mark E. Wilinski/<br/>_____<br/>Signature</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> assignee of record of the entire interest.<br/>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.<br/>(Form PTO/SB/96)</td><td style="vertical-align: top; padding-bottom: 10px;">Mark E. Wilinski<br/>_____<br/>Typed or printed name</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input checked="" type="checkbox"/> attorney or agent of record.<br/>Registration number <u>63,230</u></td><td style="vertical-align: top; padding-bottom: 10px;">202-824-3000<br/>_____<br/>Telephone number</td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br/>Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top;">May 6, 2011<br/>_____<br/>Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> |                                                    |                                          |  | <input type="checkbox"/> applicant/inventor. | /Mark E. Wilinski/<br>_____<br>Signature | <input type="checkbox"/> assignee of record of the entire interest.<br>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.<br>(Form PTO/SB/96) | Mark E. Wilinski<br>_____<br>Typed or printed name | <input checked="" type="checkbox"/> attorney or agent of record.<br>Registration number <u>63,230</u> | 202-824-3000<br>_____<br>Telephone number | <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br>Registration number if acting under 37 CFR 1.34 _____ | May 6, 2011<br>_____<br>Date |
| <input type="checkbox"/> applicant/inventor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | /Mark E. Wilinski/<br>_____<br>Signature           |                                          |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
| <input type="checkbox"/> assignee of record of the entire interest.<br>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.<br>(Form PTO/SB/96)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Mark E. Wilinski<br>_____<br>Typed or printed name |                                          |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
| <input checked="" type="checkbox"/> attorney or agent of record.<br>Registration number <u>63,230</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 202-824-3000<br>_____<br>Telephone number          |                                          |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
| <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br>Registration number if acting under 37 CFR 1.34 _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | May 6, 2011<br>_____<br>Date                       |                                          |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |
| <input checked="" type="checkbox"/> *Total of <u>3</u> forms are submitted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                    |                                          |  |                                              |                                          |                                                                                                                                                         |                                                    |                                                                                                       |                                           |                                                                                                                               |                              |

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

U.S. Patent Application No. 10/593,818  
Office Action dated March 17, 2011  
Pre-Appeal Brief Request dated May 6, 2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                            |   |                                  |
|----------------------------|---|----------------------------------|
| In re the application of:  | ) | Attorney Docket No. 006921.00018 |
|                            | ) |                                  |
| Peter Dam Nielsen          | ) | Confirmation No.: 5485           |
|                            | ) |                                  |
| Serial No.: 10/593,818     | ) | Group Art Unit: 2617             |
|                            | ) |                                  |
| Filing Date: July 13, 2007 | ) | Examiner: Huynh, Nam Trung       |
|                            | ) |                                  |
| For: MOVEMENT ACTIVATED    | ) |                                  |
| KEY GUARD                  | ) |                                  |

**ARGUMENTS IN SUPPORT OF THE PRE-APPEAL REQUEST FOR REVIEW**

Sir:

Applicant respectfully requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit Deposit Account No. 19-0733, accordingly. Any necessary extensions of time are hereby requested.

***Remarks***

Having received and reviewed the Final Office Action dated March 17, 2011, Applicants respectfully submit that the standing rejections are based on one or more clear legal and factual errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

### **Rejections Under 35 U.S.C. § 103**

Claims 1, 5-7, and 9-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. pat. no. 6,529,144 (“Nilsen”), in view of U.S. pat. no. 7,130,583 (“Skorpik”), and further in view of U.S. pat. no. 6,449,492 (“Kenagy”). This rejection is traversed below.

Independent claim 1 recites, among other features, “detecting a change of state of motion of an apparatus from a state in which the apparatus is substantially at rest, to a state in which the apparatus is in motion; monitoring for a user-induced input activity during a predetermined time period, wherein the monitoring is triggered by the detecting of the change of state of motion of the apparatus.”

The Office Action at page 4 concedes that Nilsen and Skorpik fail to teach monitoring for a user-induced input activity, wherein the monitoring is triggered by the detecting of the change of state of motion of the apparatus. The Office Action at page 4 contends that Kenagy at col. 4, lines 46-64 remedies the deficiencies of Nilsen and Skorpik in this respect. This is incorrect. Kenagy at col. 4, lines 46-64 merely describes key lock activation conditions based on no input being received from a keypad or a switch, removing a system from a hands-free accessory cradle, or on system power-on. Kenagy fails to describe a key lock activation condition (e.g., the alleged monitoring) being triggered by a detecting of a change of state of motion of the system. For example, even assuming that motion is associated with the removal of a system from a hands-free accessory cradle, one of skill in the art would appreciate that the key lock activation in Kenagy would be based on the breaking of a switch or connection between the system and the cradle, and not based on the motion of the system itself. Accordingly, claim 1 is distinguishable from the applied documents for at least the foregoing reasons (notwithstanding whether the combination of documents would have been proper).

Furthermore, one of ordinary skill in the art would not have had an apparent reason to combine Nilsen and Kenagy (with Skorpik) in the manner suggested by the Office Action. In Nilsen, a motion processor detects whether a motion sequence has occurred that matches a stored motion sequence, and if it does, a corresponding function is performed. *See, e.g.*, Nilsen at col. 2, line 67 – col. 3, line 10; col. 4, lines 14-39. Thus, in Nilsen, there would be no reason to monitor for a user-induced input activity during a predetermined time period, wherein the monitoring is triggered by detecting a change of state of motion of the apparatus because in

Nilsen the device simply determines whether the motion sequence matches a stored motion sequence. As the proposed modification of Nilsen to incorporate the alleged teachings of Kenagy is improper, claim 1 is allowable for at least these additional reasons.

Claims 7 and 10 each recite features similar to those described above with respect to claim 1. Claims 7 and 10 are allowable for at least reasons similar to those discussed above with respect to claim 1.

The dependent claims are allowable for at least the same reasons as their respective base claims and further in view of the features recited therein. For example, claim 5 recites “wherein said step of detecting that the apparatus is substantially at rest includes monitoring, during a second predetermined time period, any motion of the apparatus and, when said second predetermined time period has lapsed and motion of the apparatus has not been detected, establishing that the apparatus is substantially at rest.” The Office Action at pages 4-5 contends that Skorpik at col. 5, lines 5-22 and lines 55-61 describes such features. The cited passages of Skorpik merely describe processing circuitry that changes from a dormant operational state to an active operational state, or vice versa following termination of a movement event or the moment when sufficient data regarding the event has been processed. Skorpik fails to describe monitoring for motion of a device during a (second) predetermined time period, much less establishing that the device is substantially at rest when the predetermined time period has lapsed as recited in claim 5. Claim 5 is allowable for at least these additional reasons.

#### **CONCLUSION**

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit Deposit Account No. 19-0733, accordingly.

Applicant reserves the right to include additional arguments in an appeal brief.

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same.